

Saudi Arabia*

Saudi Arabia has acceded to two international agreements: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards¹ and the Universal Copyright Convention.²

I. The New York Convention

Saudi Arabia became a party to the New York Convention, with reservation,³ with effect from July 18, 1994.⁴ This development is notable in light of the Kingdom's traditional wariness toward adjudication procedures, and the recognition and enforcement of judgments and awards, that are not firmly grounded in the *Shari'ah*, or Islamic law, as understood and applied in Saudi Arabia. However, whether Saudi Arabia's accession to the New York Convention will prove to be of practical as opposed to symbolic significance remains to be seen.

Saudi Arabia's accession does appear to solve the problem of reciprocity with respect to awards issued in a Contracting State. Prior to accession, the enforcement in the courts of Saudi Arabia of a foreign arbitral award,⁵ other than an award

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1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 [hereinafter the New York Convention].

2. Universal Copyright Convention, Sept. 6, 1952, 6 U.S.T. 2731, 34 U.N.T.S. 132, *revised* July 24, 1971, 25 U.S.T. 1341, 2 UNESCO A2 [hereinafter the UCC].

3. Saudi Arabia has invoked the reciprocity reservation of the New York Convention, which permits a state to limit its recognition and enforcement of arbitral awards to awards rendered in the territory of a state that is also a party to the New York Convention [hereinafter a Contracting State]. Royal Decree No. M/11 dated 16/7/1414 A.H. (corresponding to December 29, 1993), published in *Umm Al Qura*, issue no. 3489, dated 10/8/1414 A.H. (corresponding to January 21, 1994) [hereinafter Royal Decree No. M/11]; New York Convention, *supra* note 1, art. I, para. 3.

Saudi Arabia did not invoke the commercial reservation, which is the other reservation permitted by the New York Convention. New York Convention, *supra* note 1, art. I, para. 3. The commercial reservation, if invoked, limits application of the New York Convention to awards arising out of disputes over legal relationships that are commercial in nature.

4. Saudi Arabia announced its intention to accede to the New York Convention in Royal Decree No. M/11, *supra* note 3. An instrument of accession was filed with the United Nations on April 19, 1994. Pursuant to article XII of the New York Convention, accession was effective on the ninetieth day following deposit of the instrument of accession, or July 18, 1994. New York Convention, *supra* note 1, art. XII, para. 2.

5. A proceeding to enforce a foreign arbitral award would be conducted before the Board of Grievances (*Diwan Al-Mazal'im*). Board of Grievances Law, Royal Decree No. M/51 dated 17/7/1402 A.H. (corresponding to May 10, 1982), art. 8(1)(g); *see also* Rules of Civil Procedure before the Board of Grievances, Council of Ministers Resolution No. 190 dated 16/11/1409 A.H. (corresponding to June 20, 1989), art. 6. The Board of Grievances operates on a circuit system with most matters being heard by three-judge panels. The president of the Board of Grievances has the discretion to appoint so-called subcircuits, composed of a single judge, to hear minor cases. *Id.* art. 14.

issued in a member state of the Arab League,⁶ required a determination that the state of origin of the arbitral award would accord reciprocal recognition of an arbitral award rendered in Saudi Arabia.⁷ That threshold requirement of reciprocity is now satisfied with respect to awards issued in Contracting States.

However, Contracting States are permitted by the terms of the New York Convention to deny the recognition and enforcement of an arbitral award on certain specified procedural and substantive grounds.⁸ Most notably, a Contracting State may refuse to recognize or enforce an award if such recognition or enforcement "would be contrary to the public policy" of the Contracting State.⁹

The scope of this public policy exception, which could affect the implementation of the New York Convention in any Contracting State, is of particular relevance in the context of Saudi Arabia, where the *Shari'ah* is the paramount law and, in effect, the ultimate expression of Saudi Arabian public policy. *Shari'ah* precepts are not always reconcilable with modern commercial practice.¹⁰

The Saudi Arabian Board of Grievances, in reliance on the public policy exception, is likely to refuse to enforce arbitral awards or such parts thereof as are deemed to be contrary to the *Shari'ah*. Unless the Board of Grievances construes narrowly what it deems to be violative of the *Shari'ah*, the enforcement of foreign arbitral awards could still prove to be problematic.

II. The Universal Copyright Convention

Saudi Arabia became a party to the UCC with effect from July 13, 1994.¹¹ By joining the UCC, Saudi Arabia has pledged "to provide for the adequate and

6. The Agreement for the Execution of Judgments approved by the Council of the Arab League in Cairo on September 14, 1952 [hereinafter the Arab League Convention], to which Saudi Arabia is a party, provides for the execution in the member states of the Arab League of arbitral awards issued in other member states of the Arab League. Arab League Convention, art. 3, *reprinted in THE ARAB STATES AND THE ARAB LEAGUE, A DOCUMENTARY RECORD* (Khalil ed. and translator, Khayats, Beirut, 1962), vol. II, INTERNATIONAL AFFAIRS, at 109-12.

7. In this respect, the treatment of a foreign arbitral award, which has been described in a circular of the president of the Board of Grievances as essentially "a judgment rendered by 'a special court,' " is identical to the treatment of a foreign court judgment submitted for enforcement in Saudi Arabia. Circular No. 7 of the president of the Board of Grievances dated 15/8/1405 A.H. (corresponding to May 5, 1985), para. fifth; *see also* INTERNATIONAL EXECUTION AGAINST JUDGMENT DEBTORS (Campbell ed., Center for International Legal Studies, Austria, 1993), vol. 1, SAUDI ARABIA, at 4, 26.

8. New York Convention, *supra* note 1, art. V, paras. 1-2.

9. *Id.* art. V, para. 2(b).

10. Perhaps the best known, but by no means only, example of the tension between *Shari'ah* principles and modern commercial practice is the *Shari'ah* prohibition on the charging and payment of interest.

11. Saudi Arabia announced its intention to accede to the UCC in Royal Decree No. M/12 dated 16/7/1414 A.H. (corresponding to December 29, 1993), published in *Umm Al Qura*, issue no. 3489, dated 10/8/1414 A.H. (corresponding to January 21, 1994). The instrument of accession was filed with the United Nations Educational, Scientific and Cultural Organization (UNESCO) on April 13, 1994. Pursuant to article IX of the UCC, accession to the UCC was effective three months after the filing with UNESCO, or July 13, 1994. UCC, *supra* note 2, art. IX, para. 2.

effective protection'' of copyrights in ''writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.''¹²

The UCC is not considered to be a self-executing treaty, meaning that it does not embody a comprehensive legal framework for the protection of copyrights that can be simply incorporated into national law. Instead, the UCC establishes minimum standards of copyright protection¹³ and obligates its signatories to give effect to those minimum standards through domestic legislation or regulation.¹⁴

It is unlikely that Saudi Arabia's current copyright law, the Law for the Protection of the Rights of Authors,¹⁵ would be considered to meet the minimum standards of the UCC. The Copyright Law is summary in nature and leaves many issues to be resolved in implementing regulations, which to date have not been promulgated. In addition, certain provisions of the Copyright Law appear to violate specific requirements of the UCC.¹⁶ Nonetheless, Saudi Arabia's accession to the UCC may result only in more aggressive enforcement of the existing Copyright Law.¹⁷ It is uncertain whether Saudi Arabia will promulgate additional rules—in the form of implementing regulations to the existing Copyright Law, new copyright laws, or otherwise—to bring its national law into greater compliance with the UCC.

The UCC has no effective mechanism to force signatories to comply with their obligations under the UCC. Parties to the UCC may bring actions against each other in the International Court of Justice for failure to provide the level of copyright protection required by the UCC.¹⁸ But the UCC contains no provisions for evaluating or certifying the sufficiency of a member state's domestic copyright law or enforcement of such law.

12. UCC, *supra* note 2, art. I.

13. The minimum standards required by the UCC include, for example, the equal treatment of foreign and national copyright owners. *Id.* art. II.

14. *Id.* art. X.

15. Law for the Protection of the Rights of Authors, Royal Decree No. M/11 dated 19/5/1410 A.H. (corresponding to December 17, 1989) [hereinafter the Copyright Law]. The Copyright Law became effective upon its publication in the *Umm Al Qura* on 15/6/1410 A.H. (corresponding to January 12, 1990). The Copyright Law supplemented earlier protection found in the Printing and Publishing Regulations, Royal Decree No. M/17 dated 13/4/1402 A.H. (corresponding to February 7, 1982).

16. For example, the Copyright Law protects the works of Saudi authors irrespective of where they are first published, performed, or displayed, but the works of foreign authors only if they are first published, performed, or displayed in Saudi Arabia. Copyright Law, *supra* note 15, art. 23; *cf.* UCC, *supra* note 2, art. II.

17. On the day Saudi Arabia's accession to the UCC became effective, the Ministry of Information issued circulars to merchants selling computer software and games, Circular No. 1005/M of the Ministry of Information dated 5/2/1415 A.H. (corresponding to July 13, 1994), and merchants selling audio and video tapes, Circular No. 1006/M of the Ministry of Information dated 5/2/1415 A.H. (corresponding to July 13, 1994). The circulars, which publicize Saudi Arabia's accession to the UCC and the Ministry of Information's intention to protect foreign copyrights, threaten infringers with the imposition of penalties under the existing Copyright Law. Those penalties include fines, confiscation of infringing goods, and injunctive relief. Copyright Law, *supra* note 15, art. 28.

18. UCC, *supra* note 2, art. XV.

